

**Applicant:** Judy C. Bernal & Peggylee Martinez

**Agent:** n/a

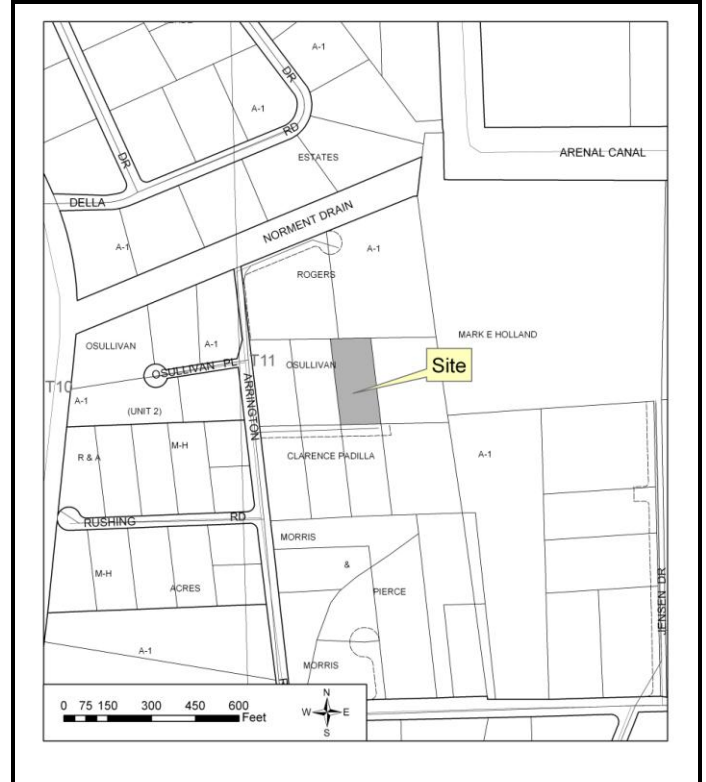
**Location:** 6904 Arrington Rd. SW

**Property Size:** 1 acre (approximately)

**Existing Zone:** A-1

**Proposed Request:** Special Use Permit for a Contractor's Yard

**Recommendation:** Denial



**Summary:** The applicant is requesting approval of a Special Use Permit for a Contractor's Yard at 6904 Arrington Road SW. This request is a result of a zoning violation for the parking of commercial vehicles in a residential zone without an approved permit.

The site is located in the Rural Area as designated in the Albuquerque/Bernalillo County Comprehensive Plan and in Residential Area Two (2) of the Southwest Area Plan.

**Staff Planner:** Adella Gallegos, Associate Program Planner

**Attachments:**

1. Application
2. Land Use Map
3. Notice of Violation dated May 5, 2010
4. Site Plan (Commissioners Only)

Bernalillo County Departments and other interested agencies reviewed this application from 7/27/10 to 8/09/10. Agency comments are verbatim and were used in preparation of this report, which begin on page 12.

**AGENDA ITEM NO.: 11**  
**County Planning Commission**  
**September 1, 2010**

CSU-20100019      Judy C. Bernal & Peggylee Martinez request approval of a Special Use Permit for a Contractor's Yard on Tract 3, Lands of O'Sullivan, located at 6904 Arrington SW, zoned A-1, and containing approximately 1 acre. (T-11)

**AREA CHARACTERISTICS AND ZONING HISTORY**

**Surrounding Zoning & Land Uses**

<b>Site</b>	<b>Zoning</b>	<b>Land Use</b>
	A-1	Residential Dwelling, Detached Garage, Commercial Trucks, equipment, storage sheds and a corral
<b>North</b>	A-1	Residential Dwellings
<b>South</b>	A-1	Vacant Lot
<b>East</b>	A-1	Residential Dwellings
<b>West</b>	M-H	Residential Dwellings

**BACKGROUND:**

**The Request**

The applicant is requesting approval of a Special Use Permit for a Contractor's Yard at 6904 Arrington Place SW. The subject site, as mentioned by the applicant, has been utilized for the parking of a semi truck for over three years. Currently existing on the site is a residential dwelling, detached garage, commercial trucks, equipment, constructions materials, storage sheds and a corral.

This request is a result of a Notice of Violation, dated June 4, 2009, for the open storage of trash and junk and the operation of a commercial contractor's yard in a residential zone without an approved permit. A recent view of the site revealed that the junk and trash have been removed.

Request Justification

The agent contends that the "A-1 zoning is not currently appropriate due to changing neighborhood conditions," "the proposed change is not harmful and does not affect the adjacent property" and that the Comprehensive Plan and Southwest Area Plan "encourage small scale commercial rather than regional scale commercial development in Rural Areas."

**Surrounding Land Use and Zoning**

The subject site is predominately surrounded with A-1 zoning to the north, east and south and M-H zoning on the west. Development surrounding the subject site is residential with the larger parcels containing some agricultural uses.

There has not been any recent zoning activity in the general vicinity of the subject site other than the approval of a minor subdivision (SPR5-20061) just east of the site that was approved in October, 2008. There are also no existing Special Use Permits in close proximity to the subject site. The Long Branch Tree Service at 6825 Arrington SW, mentioned by the applicant the application, received approval of a Special Use Permit for a Contractors Equipment Storage Yard on November 24, 1992( CSU-92-39); however, the Special Use Permit was granted for a period of five (5) years and has since expired. An application for a Special Use Permit for a Contractor's Yard (CO-20100003/CSU-90032) located at 7022 Arrington Road SW was denied by the Board of County Commissioners on January 26, 2010.

**APPLICABLE PLANS AND POLICIES:**

**Albuquerque/Bernalillo County Comprehensive Plan**

Albuquerque/Bernalillo County Comprehensive Plan

The site is located in the Rural Area as designated in the Albuquerque/Bernalillo County Comprehensive Plan and Residential Area Two of the Southwest Area Plan. The Goal is to maintain the separate identity of rural areas as alternatives to urbanization by guiding development compatible with their open character, natural resources, and traditional settlement patterns.

Policy 3.a states, "Rural Areas as shown by the Plan Map shall generally retain their rural character with development consisting primarily of ranches, farms, and single-family homes on large lots; higher density development may occur at appropriate locations – within rural villages

or planned communities. Overall gross densities shall not exceed one dwelling unit per acre.”

Policy 3.b states, “Development in Rural Areas shall be compatible with natural resource capacities, including water availability and soil capacity, community and regional goals, and shall include trail corridors where appropriate.”

Policy 3.g states, “The following policies shall guide industrial and commercial development in Rural Areas:

- . Small-scale, local industries which employ few people and may sell products on same premises are most desirable industrial uses.
- . Neighborhood and/or community-scale rather than regional-scale commercial centers are appropriate for rural areas. Strip commercial development should be discouraged and, instead, commercial development should be clustered at major intersections and within designated mountain and valley villages.

**Policy 6** Economic Development: The Goal is to achieve steady and diversified economic development balanced with other important social, cultural, and environmental goals.”

**Policy 6.a** states that, “New employment opportunities which will accommodate a wide range of occupational skills and salary levels shall be encouraged and new jobs located convenient to areas of most need.”

**Policy 6.b** states that, “Development of local business enterprises as well as the recruitment of outside firms shall be emphasized.”

**Policy 6.g** states that, “Concentrations of employment in Activity Centers should be promoted in an effort to balance jobs with housing and population and reduce the need to travel.”

### **Southwest Area Plan**

The site is located in Residential Area Two (2) of the Southwest Area Plan.

**Policy 29** states “The County and City stabilize residential zoning and land use in the plan area.”

- c) Limit the location, duration and type of new uses allowed by special use permits for heavy commercial and manufacturing uses in the South Valley residential zones to owner-occupied businesses with five or fewer employees on ½ acre or greater.
- g) In order to stabilize residential and agricultural zoning and land use within the rural area of the south valley, new special use permits for industrial and manufacturing uses should be limited to those that carry on the majority of their operations within a completely enclosed building designed to reflect the character of the existing neighborhood. All outside storage must be screened from public view and the entire property must be buffered with landscaping and/or solid walls along any property line abutting a residential zone.

**Policy 34** states, “Standards for outdoor lighting shall be implemented to ensure that their use does not interfere with the night sky environment and unnecessarily adjacent properties.”

- a. Outdoor light poles within residential areas should not exceed sixteen (16) feet in height above existing grade; when mounted on buildings or structures, fixtures should not exceed twelve (12) feet from existing grade.

**Policy 36** states “Enhance the visual character and quality of the streetscape and overall development by integrating the design and materials of required perimeter walls.”

**Policy 46** states, “Balance economic development and the quality of life for existing communities as well as for newly developed areas.”

**Policy 54** states, “Promote and assist the viability of agricultural based economic activities in the Plan Area.”

### **Bernalillo County Zoning Ordinance**

**Resolution 116-86** defines criteria for evaluating a Zone Map changes and Special Use Permit applications.

The following policies for deciding zone map changes and Special Use Permit applications pursuant to the adopted Bernalillo County Zoning Ordinance.

- A. A proposed land use change must be found to be consistent with the health, safety and general welfare of the residents of the County.
- B. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.
- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan of other Master Plans and amendments thereto including privately developed area plans which have been adopted by the Board of County Commissioners.
- D. Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.
- E. The applicant must demonstrate that the existing zoning is inappropriate because:
  1. An error in the original zone map.
  2. Changed neighborhood conditions, which justifies a change in land use or
  3. That a different use category is more advantageous to the community as articulated in the Comprehensive Plan or other land use plans as adopted by the Board of County Commissioners.
- F. A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.

- G. Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.
- H. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a “spot zone.” Such a change of zone may be approved only when:
  - 1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
  - 2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.
- I. A zone change request, which would give a zone different from the surrounding zoning to a strip of land along a street, is generally called a “strip zoning.” Such a change of zone may be approved only when:
  - 1. The change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
  - 2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

**Section 18. Special Use Permit Regulations.**

- A. By Special Use Permit after receipt of a recommendation from the Bernalillo County Planning Commission, the Board of County Commissioners may authorize the location of uses in any zone in which they are not permitted by other sections of this ordinance; the Bernalillo County Commission may likewise authorize the increase in height of buildings beyond the limits set by previous sections of this ordinance. With such permits, the Bernalillo County Commission may impose such conditions and limitations as it deems necessary:
  - 1. To ensure that the degree of compatibility of property uses which this section is intended to promote and preserve shall be maintained with respect to the special use on the particular site and consideration of existing and potential uses of property within the zone and the general area in which the use is proposed to be located;
  - 2. To ensure that the proper performance standards and conditions are, whenever necessary, imposed upon uses which are, or which reasonably may be expected to become, obnoxious, dangerous, offensive or injurious to the health, safety, or welfare of the public,

or a portion thereof, by reason of the emission of noise, smoke, dust, fumes, vibration, odor, or other harmful or annoying substances;

3. To preserve the utility, integrity and character of the zone in which the use will be located, without adversely affecting adjacent zones; and
4. To ensure that the use will not be or become detrimental to the public interest, health, safety, convenience, or the general welfare.

In certain situations based on unique conditions, and where there is evidence of substantial support from the affected neighborhood residents and/or property owners within 100 feet, a Special Use Permit may be recommended for approval by the Board of county Commissioners for any of the specific uses set forth in Section 12, 13, 14, 15, 16, 17, and 18 of the Bernalillo County Zoning Ordinance. The Special Use Permits may be considered by the County Planning Commission only after it has been determined that the requested zone is inappropriate, and that unique conditions and substantial neighborhood support exist.

#### **Section 19: Landscaping and Buffer Landscaping Regulations:**

Where a nonresidential zone which is hereafter developed for a business purpose abuts a residentially zoned property, special buffer landscaping is required to minimize noise, lighting and sight impact of the nonresidential activities in the residential area.

- A. Landscaping and buffer landscaping will be required in all zones for office, commercial, industrial, and multifamily residential uses; R-1, A-1, A-2 and M-H residential uses are exempt.
  1. Sites of one acre or less:
    - a. There shall be a landscaped setback along all streets of no less than ten feet.
    - b. There shall be a landscaped buffer of six feet between single-family residential uses and office, commercial, industrial, and multifamily residential uses.
    - c. Fifteen percent of all paved areas shall be landscaped. The landscaped setback shall contribute toward this requirement.
  2. Sites one acre and up to five acres. There shall be a landscaped setback along all streets of no less than 15 feet. All other requirements same as 1.b. and 1.c. above.
- B. In a nonresidential zone, a solid wall or a solid fence at least six feet high shall be erected on sides abutting a single family residential use, except for those sides abutting public right-of-way.
- E. Landscaping which dies shall be replaced by the property owner who is obligated to provide it as expeditiously as possible, but in no case longer than 30 days after notification. If the 30-day period falls at a time of the year when planting of landscaping is inadvisable, a

waiver may be granted by the Zoning Administrator to allow planting at the earliest possible time. The waiver and date of the planting deadline shall be recorded by the County Zoning Office.

G. Parking spaces within a parking lot shall be no more than 50 feet from a tree.

H. Nonconforming Landscaping. Premises which, when they were developed, were not required to be developed in accordance with the Landscaping and Buffer Landscaping Regulations Section of this ordinance, shall be made to conform with this regulation within two years due to the amendment of the map or text of this ordinance.

### **ANALYSIS:**

#### **Surrounding Land Use and Zoning**

The site is zoned A-1 and surrounded with A-1 zoning on the north, south and east developed residentially. To the west is M-H zoning with existing residential dwellings.

#### **Plans**

The site is located in the Rural Area as designated in the Albuquerque/Bernalillo County Comprehensive Plan and Residential Area Two of the Southwest Area Plan. The Goal is to maintain the separate identity of Rural areas as alternatives to urbanization by guiding development compatible with their open character, natural resources, and traditional settlement patterns.

The request appears to be inconsistent with County land use plans and scenarios that recommend the stabilization of residential zoning and suggest that the location of the subject site should not have commercial uses. Although policy regarding commercial development supports small scale, local industries that employ few people, the Rural Area, Policy g states that commercial development should be clustered at major intersections and within designated mountain and valley villages. The subject site is not located within a defined village center and the existing activity appears to conflict with this Rural Area policy in that the operation of this business is inconsistent with the A-1 zoning and rural agricultural and residential land uses.

#### **Zoning Ordinance**

The Zoning Code defines the purpose of the A-1 zone is to recognize the desirability of carrying on compatible agricultural operations and for spacious home developments in areas near the fringes of urban development. A contractor's yard for the continuance of a commercial business conflicts with the predominant zoning surrounding the subject site, with is residential and rural. This use appears to be more intense than what is typically found in the rural agricultural and residential areas surrounding the site. The closes Special Use Permit issued in the vicinity of the subject site was for a small pump station located adjacent to the Los Padillas Elementary School on Los Padillas Road.

#### **Agency Comments**

The Office of Environmental Health is requiring the owner to verify sewer connection, and whether the septic tank is permitted under HSTL 86599 and has been properly abandoned. In



the event the septic tank has not been abandoned, a tank abandonment permit and inspection will be required.

The Public Works Division has noted the northern drive must be widened to 30-feet and that a 30-foot asphalt be installed from Arrington onto the property a Traffic Impact Analysis Scoping Report. A formal grading and drainage plan may also be required prior to any additional development, re-grading or re-surfacing.

### Analysis Summary

Zoning	
Resolution 116-86	Inconsistent with Resolution 116-86 in that the applicant has not demonstrated that the existing zoning is inappropriate.
	Inconsistent with Resolution 116-86 in that there has not been any changed neighborhood conditions of the intensity of a contractor's yard for the operation of a commercial business that would justify a change of land use.
Plans	
Comprehensive Plan	
	In consistent with the Rural Area designation Conflicts with Rural Area Policy 3.g which states that commercial development should be clustered at major intersections and within designated mountain and valley villages
Southwest Area Plan	
	Inconsistent with Policy 29 that recommends the stabilization of residential zoning and encourages C-2, M-1 and M-2 uses in the area located south of Woodward and east of Second Street.
Other Requirements	
Environmental Health	Proof of sewer connection and/or proof of septic tank abandonment
Public Works Division	A 30-foot asphalt driveway and a TIA scoping report.

### Conclusion

Resolution 116-86 establishes policies regarding zone changes and Special Use Permit requests. The Resolution states that the applicant must demonstrate that the existing zoning is inappropriate because of an error in the zone map, changed conditions in the neighborhood or community which justify a change in the land use or that a different use category is more advantageous to the community as articulated in the Comprehensive Plan or other land use plans as adopted by the Board of County Commissioners. It does not appear that there has been land use activity in this specific area which is of the intensity of contractor's yard for the operation of a commercial business that justifies this request.

Resolution 116-86 requires that a land use change must clearly facilitate the revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area plan. In this case, it appears that the location of this request is inconsistent with the Comprehensive Plan and the Southwest Area Plan policies in that both plans call for the stabilization of zoning the plan area. The Southwest Area Plan encourages C-2, CL-I, M-1 and M-2 land use in the area located south of Woodward and east of Second Street to promote areas employment. Based on Resolution 116-86, it does not appear that the proposed land use change will clearly facilitate revitalization of the Comprehensive Plan and the Southwest Area Plan for this rural residential area of the County.

There has not been any opposition submitted with this request and the applicant provided a petition in support with this application (attachment 1).

**RECOMMENDATION:** Denial of CSU-20100019

Adella Gallegos,  
Associate Program Planner

**FINDINGS:**

1. This is a request for a of a Special Use Permit for a Contractor's Yard on Tract 3, Lands of O'Sullivan, located at 6904 Arrington SW, zoned A-1, and containing approximately 1 acre.
2. The property is located in the Rural Area of the Albuquerque/Bernalillo County Comprehensive Plan and Residential Area Two (2) of the Southwest Area Plan.
3. This request conflicts with Resolution 116-86 in that the applicant has failed to demonstrate that the existing zoning is inappropriate.
4. This request conflicts with the Albuquerque/Bernalillo County Comprehensive Plan, Policy 3.g and the Southwest Area Plan Policies 29(d) and 45 in that these plans recommend the stabilization of residential zoning and that commercial/industrial development be located within a defined village center and/or located south of Woodward and east of Second Street and east of Paseo Del Volcan and I-40. The subject site is situated amid residential development and not within the recommended identified boundaries for commercial development.
5. This request conflicts with Resolution 116.86, in that the proposed land use is detrimental to the public interest, health, safety and general welfare of the area.
6. This request conflicts with Resolution 116-86, in that there have not been any changed neighborhood conditions that would justify a change in land use where the area has remained as agricultural and residential.

7. This request is a result of a zoning violation for the parking of commercial vehicles in a residential zone without an approved permit.

**BERNALILLO COUNTY DEPARTMENT COMMENTS**

Environmental Health:

BCEH does not have record of an approved drinking water source for subject property. Applicant must provide proof of connection to an approved water utility provider or make application for a Bernalillo County well permit.

Fire: No comments received.

Zoning Administrator: No comments received.

Zoning Enforcement Manager:

Must comply with all Bernalillo County Code regulations for this project. There is a current violation of commercial vehicles parked at residence.

Building Department Manager: No comment

Public Works:

DRAN:

A grading and drainage plan is not required at this time for approval of the Special Use Permit Request. This request appears to be consistent with the current use of the property and no significant changes to the current development or terrain are implied.

A formal grading and drainage plan with full report and analysis meeting the requirements of Bernalillo County Code Chapter 38, "Floods", prepared by an engineer licensed in the state of New Mexico and approved by Bernalillo County Public Works, may be required prior to any additional development, re-grading or re-surfacing.

DRE:

Condition of Approvals:

- (1) Require an Asphalt Apron, (40-foot wide x 20-foot long).
- (2) A Traffic Scoping Report is required within 60 days of approval.
- (3) Street is longer than 150-feet, a turnaround is required, but should be deferred to the Fire Department's approval.

Parks & Recreation: No comment.

Sheriff's: No comments received

**COMMENTS FROM OTHER AGENCIES**

MRGCOG: No comment on the proposed development application.

AMAFCA: No comment.

City Planning Department/Development Services: Reviewed, no comment.

COUNTY PLANNING COMMISSION

September 1, 2010

CSU-20100019

City Open Space: Open Space has no adverse comments.

Municipal Development Department:

Transp. Planning & Development: No adverse comments.

City Transit: No comments.

ABCWUA/Utility Development Section: No adverse comments.

City Environmental Health: No comments received

NM Department of Transportation:

NMDOT has no objection to the granting of the special use permit.

Albuquerque Public School: This will have no adverse impacts to the APS district.

PNM: No comment based on the information provided to date.

**NEIGHBORHOOD ASSOCIATIONS:**

South Valley Coalition of Neighborhood Associations

South Valley Alliance

Southwest Alliance of Neighbors

Los Padillas Neighborhood Association

Far South Valley Homeowners Association